

**REPORT OF THE JUDICIAL RESOURCES COMMISSION
TO THE SUPREME COURT
AND GENERAL ASSEMBLY
CY 2000**

Since issuing its first report in 1991, the Judicial Resources Commission has met annually to review the state of the judiciary and make recommendations as needed. The following is the report for Calendar Year 2000.

JURY MANAGEMENT

Courts continue to experience difficulty assembling jury pools and the public continues to regard jury service as too burdensome. Improving juror compensation, providing better accommodations, insuring jurors' safety, and making jury duty a more positive experience remain important goals. Senate Bill 1, passed in 1999, provided several changes relating to juries. Jury duty pay is increased if the county contributes at least \$6. If so, then the State will contribute an additional \$6, bringing the total to \$18. A number of counties have taken advantage of this provision to increase pay for their jurors. The jury supervisor, in accordance with the circuit court's guidelines, may postpone a prospective juror's service to a later date. One provision of this bill has an effective date of 1/1/05. This provision prohibits jurors from attending court for prospective jury service for more than two days unless the juror is selected to serve on a panel for jury service under Section 494.420.2, RSMo, or in one particular case. The other provisions were effective 8/28/99. While these are important changes, there remains a need for automated juror selection and management system statewide, as well as a need to study safety issues.

A statewide license for OMNI Tech's *Juror for Windows* software has been purchased to supply to Missouri Courts for jury management. The *Juror for Windows* pilot sites are St. Charles and Jackson Counties. The announcement of the availability of the *Juror for Windows* package has been distributed to all courts. While some courts, particularly in the metro areas, have initiated programs that include escorting jurors to their vehicles and keeping identifying information confidential both during and after a trial, these practices are not employed state-wide, and their absence is often a deterrent to prospective jurors. The *Juror for Windows* software does not make addresses available to attorneys and others who may view the list.

The Commission also notes that the number of preemptory challenges permitted significantly affects the size of a panel that must be summoned.

The Department of Revenue no longer provides drivers license information to the courts. Legislation may be introduced to clarify when this information can be released.

The Commission recommends that the General Assembly consider legislation which improves procedures for jurors and the protection of citizens asked to perform service as jurors. The Commission also recommends that a statewide commission be established to study the safety, compensation, and number of jurors, and that it take into consideration the impact of preemptory challenges on the size of the panel. While the provisions of SB 1 have improved juror compensation somewhat, the Commission recommends that the General Assembly increase that compensation further.

CIRCUIT CLERKS

The position of circuit clerk is a highly responsible position that is critical to the efficient operation of the circuit courts. Appointment of all circuit clerks would provide personnel with the required qualifications for this office.

The Commission recommends the appointment of all circuit clerks.

COURTHOUSE FACILITIES

Courts lack facilities to accommodate senior and transferred judges, lack jury facilities and clerical workspace. These problems will become more acute as automation progresses and courts need adequate wiring and space for computer hardware. Some courts are still not in compliance with the Americans with Disabilities Act (ADA). Additionally, effective courthouse security is lacking in the majority of Missouri's courts. A new position of Program Coordinator for Access to the Courts has been created in OSCA. The "Access to Courts Program" includes services such as physical accessibility assessments. Additionally, a Court Security Coordinator position has been created in OSCA to assist courts in developing and improving court security. The Security Coordinator is available to conduct on-site assessments of court security postures and adequacy of emergency planning; provide recommendations to improve the security posture and emergency planning; assist in developing local security policies and plans and emergency plans; tailored to local community needs and capabilities; review proposed construction and renovation plans to recommend appropriate security measures; and, conduct training on security and emergency planning. A Supreme Court committee is examining the issues related to ADA in the courts, and an ADA compliance survey is being conducted.

The Commission recommends that assistance, including financial assistance, be given to help the courts with compliance with the ADA. The Commission also notes that, in many circuits, there is a need for additional courtroom space and encourages local governments to provide additional space where needed.

FOREIGN LANGUAGE INTERPRETERS

The influx of non-English speaking people into Missouri and traveling through the state has created a problem with providing adequate foreign language interpreters for the courts. The newly-created "Access to Courts Program," mentioned above, includes services such as assistance in locating qualified foreign language interpreters, managing the court interpreter certification program, providing assistive listening devices to the courts, and maintaining a list of qualified deaf interpreters. The court interpreter certification program ensures that qualified interpreters are available for the courts to appoint, protecting the constitutional rights of non-English speaking court participants.

The Commission supports the programs that have been developed to provide for qualified interpreters. The Commission also recommends that a survey be completed determining the need for qualified interpreters in circuit and municipal courts in domestic violence cases.

The Commission recognizes that in cases filed under the adult abuse act, there is a special problem in those situations where one or both of the litigants does not have sufficient understanding of the English language. The Legislature has recognized the importance of access to the courts for persons seeking orders of protection in cases involving domestic violence and other adult abuse situations, and has not required the deposit of a filing fee to petition for an order or protection. However, current state law provides for payment of interpreters only for criminal cases. If a person seeking to file for an order of protection is required to pay for an interpreter, then in many cases where the petitioner is indigent or low-income, the effect is to deny access to the courts to resolve what could be a life-threatening situation. The Commission recommends that the question of how to provide for interpreters in these cases, especially for indigent litigants, be jointly addressed by the judicial, executive and legislative branches.

MUNICIPAL COURTS

Municipal courts handle municipal ordinance violations. Section 479.020, RSMo provides that "Any city, town or village, including those operating under a constitutional or special charter, may, and cities with a population of four hundred thousand or more shall, provide by ordinance or charter for the selection, tenure and compensation of a municipal judge or judges...." (Where a municipal judge has not been appointed or elected, associate circuit judges hear municipal cases.) Municipal judges in Kansas City are appointed under the non-partisan court plan. In municipalities with a population under 7,500, municipal judges are not required to be attorneys. At present, about 25% of the 336 municipal judges are non-lawyers. Many municipal courts operate relatively autonomously. While the presiding judge of the circuit has superintending authority, in fact many courts are unsupervised until a problem develops. Because the municipal courts are the only courts that many citizens have contact with, and municipal judges have the authority to assess monetary fines and jail sentences, the Commission recommends that municipal judges meet the high standards of the rest of the judiciary.

The Commission recommends that all municipal judges be attorneys. The Commission also recommends that the General Assembly appoint a Joint Committee to study this issue. Specifically, the committee should study the administration, training and standards for the municipal courts. Any recommendations coming out of this process should be jointly addressed by the judicial, legislative and state and local executive branches. The Commission supports continued funding for education programs, and further, recommends that the number of training sessions available exclusively to non-lawyer judges be increased.

JUVENILE FACILITIES AND TREATMENT SERVICE

The number of children entering the juvenile justice system continues to increase, as does the number of children certified to stand trial as an adult. The number of cases filed in the juvenile courts continues to climb, led by allegations of state law violations and abuse and neglect. In the past ten years, there has been an increase of 34% in the total number of juvenile cases filed; projections show this increase to be 59% by 2002. Part of the rise is the increase in termination of parental rights cases and adoptions, fueled by state initiatives to reduce the amount of time children spend in foster and other alternative care situations. There is a lack of treatment and detention facilities for certified and other levels of juvenile offenders. The legislative requirement that state agencies share data is difficult because the juvenile system is not automated. In July of 1999, 466.3 FTE from the juvenile courts were converted to state employees. This is a significant step toward enhancing the ability and procedures of juvenile court employees. The statute allows single-county circuits to request to become state employees, subject to appropriation. In the FY 2002 budget, four single-county circuits have requested that their employees be state employees.

Again in 2000, there has been significant progress in the area of juvenile justice. The approval of a federal appropriation of \$7 million has allowed the beginning implementation of an automated juvenile justice information system. A standardized assessment and classification system for juvenile offenders is now in use, and plans are underway for the implementation of a statewide on-line information sharing network between OSCA and DFS, DYS, the Departments of Health, Elementary and Secondary Education, and Mental Health. The FY 2002 budget contains a request for additional FTE in the courts to help the courts comply with legislative mandates relating to juveniles.

The Commission supports the Circuit Court Budget Committee in its budget request for additional FTE to allow it to comply with the legislative requirements for juveniles. The Commission also recommends that the request for single county circuits to convert to state employees be approved, and that eventually, all juvenile court employees become state employees.

FEDERAL CHILD ABUSE/NEGLECT MANDATES

Federal legislation has imposed requirements on states relating to child abuse and neglect cases. This new federal legislation was a congressional response to children staying too long in out-of-home care. The legislation placed additional burdens on state courts, including establishing new timelines and conditions for filing termination of parental rights petitions, and requiring a permanency hearing be held within twelve months of a child entering care. Missouri has responded to the federal requirements with legislation to bring state law into compliance.

The Office of State Courts Administrator continued pilot projects in the 2nd and 23rd judicial circuits to assess the problems and methods involved in, among other areas, expedited adoptions, dual planning, and a shorter time frame for termination of parental rights proceedings. Preliminary data shows that both circuits made significant progress in improving the permanency outcomes for children. On June 30, 2000 the 2nd and 23rd Circuits completed their third and final year as Juvenile Court Improvement Project (JCIP) pilot courts. However, because of partial federal funding through FY2001, a plan was developed that allowed for the projects in the 2nd and 23rd circuits to be discontinued on June 30, 2000, but provided continued funding to a third court. In December 1999, in response to another statewide call for proposals, the 22nd Judicial Circuit (St. Louis City) was selected to serve as the third project court, and began their three-year pilot project in January 2000.

The Commission supports the request for funding in the FY 2002 budget to continue the pilot project and further supports expansion of the permanency planning project.

FAMILY COURTS

Family Courts, established by statute in 1993, offer a means of coordinating many related judicial activities. Under the "umbrella" of the family court, domestic relations cases, adoptions, juvenile cases, adult abuse/child protection petitions, paternity cases and child support issues are handled by a single court whose primary purpose is to adjudicate these often-related cases. To date, family courts have been established in the 7th, 11th, 13th, 16th, 20th, 21st, 22nd, 23rd, and 31st circuits. However, not all Family Courts are providing the coordinated services that were intended by the legislation, and many courts do not provide the coordinated services that benefit litigants and their families. Separate judges and clerks handle juvenile, adult abuse, domestic relations, and paternity cases, despite the fact that some of the cases overlap and could be best addressed as a whole. The present system places court clerical staff in situations which are more appropriate for trained professional staff, e.g., assisting with adult abuse petitions, discussing visitation problems, etc.

The Unified Family Court Committee has been created to develop family court operational and functional standards to be presented to the Supreme Court for adoption. A pilot Unified Family Court is in the planning stages in the 22nd Judicial Circuit (St. Louis City.)

The Commission recommends that, wherever possible and needed, Family Courts be established. It also recommends that adult abuse and child protection assistance be provided by someone other than a clerk, preferably a professional staff member. The Commission encourages presiding judges to adopt mediation programs, or an analogous program, in those domestic relations cases where children are involved. The Commission also recommends that, wherever a Family Court is created, the court provide the maximum programs and services possible for all family members. The Commission supports the pilot project planned for the 22nd judicial circuit.

JUDICIAL RESOURCES ALLOCATION

The Commission recommends that the issue of allocation of judges be jointly addressed by the judicial, executive and legislative branches at the earliest possible time so that caseloads among judges in the various circuits will be brought into better balance, and that caseloads be reviewed on a regular basis to insure that judicial resources continue to be properly allocated.

Legislation in recent years has created a number of judicial commissioners, most notably in family courts. Since these commissioners are not elected or appointed by the governor, as are judges, the issue of converting judicial commissioner positions to judgeships has been raised. Legislation was introduced in the 2000 legislative session to convert judicial commissioner positions, but it did not pass. There is a request in the FY 2002 budget for additional associate circuits in counties where population increases provide for one.

The Commission recommends that the issue of converting judicial commissioner positions to judgeships be addressed by the legislature, the governor, and the judiciary. The Commission also supports the budget request for additional associate circuit judges based on population increases in those counties, and recommends retention of the flexibility provided by the judge transfer program.

SENIOR JUDGES

Section 476.682, RSMo provides the statutory basis for compensating senior judges the difference between their judicial retirement and the salary of the office for those days they sit as a senior judge pursuant to Supreme Court order. The senior judges provide assistance, where needed, for a fraction of the cost of a permanent judge. This program is working very well, as senior judges continue to provide a valuable service for Missourians.

In FY 00, 64 retired judges accepted assignments to serve as senior judges. Senior judges served for 2,730 days in FY 00. This amounts to 546 weeks of judicial service provided by senior judges where vacancies had occurred due to retirement or illness, keeping dockets current until a replacement was appointed or in an effort by the court to remain current. Based on the statutory standard of 235 days equaling one year's service, senior judges provided over 11 judgeships in FY 00. In addition, senior judges were assigned to 813 individual cases that were for the most part multi-day jury trials or complex matters.

This year there was not sufficient funding to pay senior judges 100% of the amount due them in the last quarter of the fiscal year. There is a decision item in the FY 02 budget to again increase the appropriation for senior judges so that they can be paid fully for the time they serve. Senior judges continue to experience difficulties with inadequate courthouse space and facilities, including the absence of a court reporter in most instances. At present, official court reporters frequently cannot be freed from regular assignments to preserve lengthy or complex trials conducted by senior judges—the types of trials they are most likely to conduct. As a result, litigants willing to use a senior judge who wish to have a court reporter are required to pay for the related costs themselves. This is unfair, since other litigants who have similar cases heard by active circuit judges are not required to assume those costs.

The Commission recommends that adequate support services be provided for senior judges, including court reporters for lengthy or complex trials. The Commission recommends that presiding judges arrange for necessary facilities—court reporter, courtroom—in advance for a senior judge who has agreed to serve. The Commission also recommends that the temporary court reporter fund be expanded to cover payment for court reporters for senior judges when one is not available. The Commission commends the General Assembly for fully funding senior judge compensation in the past and supports an increase in appropriations in FY 02 to accommodate the efficient utilization of the valuable resource made available by senior judges. The Commission also commends senior judges who continue to provide this valuable service.

TIME STANDARDS

Progress was made in ____ of the 5 time standards categories during fiscal year 2000 (will be added before report is submitted). The Judicial Conference established the Daniel O'Toole award to be presented to courts that achieved significant compliance with the time standards. For 2000, the recipients again were the 14th and 32nd circuits. A table detailing the status of time standards accompanies this report.

No recommendation required other than that the courts continue to evaluate the progress of time standards implementation.

PUBLIC DEFENDER

The most critical issue facing Missouri's Public Defender System is recruitment and retention of attorney staff.

As late as 1994, nearly twenty percent of nearly all Missouri public defenders resigned annually, usually citing low compensation as the reason. After 1994, funding increases improved attorney salaries and retention was greatly improved. The turnover rate dropped to approximately eight percent. More experienced public defenders provided better representation and contributed greatly to a higher case disposition rate (assignments divided by dispositions).

Unfortunately, the recruitment and retention successes of the past few years have faded and Missouri's Public Defender System, as well as the clients and courts they serve, are facing a crisis situation.

The robust economy, particularly in the legal community, is placing Missouri's Public Defender System in an impossible situation as to recruitment and retention of attorneys. Some of Missouri's top law firms recently raised starting salaries to \$90,000 per year. Even medium and small firms, against whom the Public Defender System directly competes in recruitment, start associates at approximately \$60,000 per year. Missouri's assistant public defenders start at \$30,000 per year and, if highly successful, can expect to be making in the lower \$50,000 range after about five years. It is little wonder that Missouri's Public Defender System is losing the best recruits and their most experienced attorneys to the private sector.

Today's law school graduates often graduate with exorbitant student loans. A State Public Defender System survey indicates most of its attorneys graduated with \$50,000 to \$100,000 of student debt. Approximately five percent of those surveyed had debt in excess of \$100,000. Young attorneys desirous of public service, even those willing to forgo higher salaries, simply cannot do so in the face of this extreme debt burden. The State Public Defender Commission has requested funding to initiate a loan forgiveness program. Even this modest loan forgiveness (\$100.00 per month for the first 36 months of service), is expected to give the State Public Defender help in recruitment.

The caseload of Missouri's Public Defender System continues to rise. Total cases assigned in FY00 were 75,738, up 2.7%. Unfortunately, the case disposition rate was only 91%. Over 6,000 more cases were assigned than disposed in FY00. This incredibly low disposition rate is directly due to the State Public Defender's inability to fill attorney positions.

A juvenile public defender office in metropolitan St. Louis, which was approved by the Public Defender Commission in September, 1996, greatly improved juvenile court representation. The State Public Defender Commission received additional funding for FY01 for additional staff to replicate this highly successful program in the Kansas City area. Unfortunately, this initiative has stalled due to the inability to recruit attorneys for the existing Public Defender offices. Once these positions are filled, it is expected both offices will be resource centers for public defenders in rural areas of the state where juvenile caseload is simply insufficient to support specialized juvenile public defender offices.

Finally, State Public Defender must have adequate and sufficient office space. Again this year the State Public Defender Commission seeks a change to RSMo. 600.040.1 and the funding to make the financial burden of office space a state, rather than county obligation. Prior efforts at this modification have been unsuccessful. Instead, the General Assembly approved language to House Bill 5, allowing for the interception of county prisoner per diem funds if that county was failing to meet its obligation under RSMo. 600.040. State Public Defender Commission continues to seek the cooperation of county governments in this area and hopes county governments will comply with their statutory obligation. While some have, many counties view the interceptions of prisoner per diem as heavy-handed, state mandate tactics, straining county/state relations.

A new section, RSMo. 600.101, was enacted in 1999. It calls for disputes between the Office of State Public Defender and the counties to be presented to the Judicial Finance Committee. It also calls for a report from the Judicial Resources Committee to the chairs of the House and Senate Judiciary and Budget Committees. (This report is submitted separately as an attachment.)

The Commission supports the State Public Defender in its recruitment and retention efforts. This Commission recognizes the integral role the State Public Defender plays in the entire criminal justice system and also recognizes without the recruitment and retention of qualified attorneys the interests of justice will not be met. The Commission supports the State Public Defender in its efforts at increased funding, both as to salaries and as to loan forgiveness programs in the hopes both will enhance recruitment and retention. The Commission also supports the State Public Defender in its effort to revise RSMo. 600.040 and its budget request for funding office space needs.

STATEWIDE COURT AUTOMATION

The Missouri Court Automation (MCA) Committee is implementing the statewide plan developed in the information architecture and adopted in July 1996. The FY 02 budget contains a request for a total of \$19.3 million to maintain and expand implementation of this important project. By the end of this calendar year, virtually the entire infrastructure for automation will have been installed statewide. Also, by the end of this fiscal year, the case management system will be running in 21 circuits, encompassing 47 Missouri counties and the City of St. Louis. The case management rollout decision item for FY 2002 will add another 27 counties in ten circuits, for a total of 74 counties and the City of St. Louis in 31 circuits.

The Commission acknowledges the ongoing need to maintain the automation system, to expand the applications of the system, and to replace and maintain equipment. Therefore, the Commission supports funding what will be an indispensable service within the judiciary. The Commission also recommends that uniformity be established throughout the system.

REGIONAL JUSTICE CENTERS

The county-based courthouse system currently in place in Missouri is inefficient and archaic as Missouri approaches the 21st century. The concept of regional justice centers has emerged in recent years as a means of modernizing the way justice-related facilities are developed.

The 24th (Washington, St. Francois, St. Genevieve and Madison Counties) and 28th (Vernon, Barton, Cedar and Dade Counties) Circuits were selected as study sites for the establishment of regional justice centers. Notice of the project was distributed statewide to the presiding judge of each judicial circuit, and to the presiding county commissioner and sheriff of each county. The judge, commissioners and sheriffs of the counties comprising the 24th, 28th, 43rd and 44th Circuits applied to participate in the studies.

The Ad Hoc Committee to Examine the Regional Justice Center Concept recommended selection of Circuits 24 and 28 based on comprehensive view of a regional justice center; commitment of the presiding judge to provide the leadership necessary for implementation of a center; support/cooperation of major players in the circuit -- presiding judges, county commissioners, and sheriffs; and diversity in terms of geographic location, population, caseload, and presence of correctional facilities. The completed study concluded that justice centers should be constructed in each of the circuits studied. The Supreme Court will determine what action, if any, will be taken to implement this concept.

The Commission supports the concepts of regional justice centers. The Commission recognizes the importance and validity of a joint effort on the part of the courts and county governments to deal with the costs and inconveniences that presently occur because of separate facilities.

MEDIATION AND ADR SERVICES

At present, there is no dedicated program housed within the judiciary to support state courts' efforts to deliver Alternative Dispute Resolution (ADR) services to litigants as authorized in Chapters 435, 452, and 487, RSMo and provided for in Supreme Court Rules 17 and 88. The Commission on Alternative Dispute Resolution Services in Domestic Relations Cases was created by the Supreme Court in August, 1999, and issued its initial recommendations on July 1, 2000.

The Commission supports state courts' efforts to deliver Alternative Dispute Resolution services to litigants.

COURT APPOINTED SPECIAL ADVOCATE PROGRAMS

Court appointed special advocates (CASAs) are volunteers who serve in various capacities to assist the courts and DFS to minimize the time a child spends in official care and maximize the chance that the child will have a home safe from abuse and neglect in a timely manner. This both benefits the child, and saves the state considerable expense for foster care. Legislation was introduced last session that would have created the "Missouri CASA Fund" to be administered by the state courts administrator, but it did not pass. It will likely be introduced again this year. Currently, fourteen circuits use CASAs: the 3rd, 4th, 5th, 7th, 8th, 9th, 16th, 17th, 21st, 22nd, 25th, 31st, 37th, and the 42nd.

The Commission supports the efforts of courts to employ CASAs whenever possible. The Commission supports legislation that would create the "Missouri CASA Fund."

DRUG COURTS

In 1998, the legislature passed HB 1147 which provided that "Drug courts may be established by any circuit court pursuant to sections 478.001 to 478.006 to provide an alternative for the judicial system to dispose of cases which stem from drug use." Under this concept, defendants are diverted to drug court programs in various ways and at various stages of the judicial process, depending on the circumstances. Early studies show a substantial decrease in re-arrests. At the National Drug Court Conference held in 1999, the Attorney General announced Enhancement Grant and Planning Grant awards from the Drug Courts Program. The \$267,719 Enhancement Grant received by Missouri is funding an evaluation of 14 drug courts in Missouri that began in January 2000. The Circuit Court Budget Committee is requesting a total of 11 drug court commissioners and administrators to assist with the implementation of provisions relating to drug courts in each of the 5th, 7th, 12th, 15th, 17th, 19th, 23rd, 36th and 44th circuits, and funding to expand the number of drug treatment programs in juvenile and family courts.

The Commission supports the concept of drug courts and encourages their implementation in additional circuits. The Commission supports the Circuit Court budget request for FY 2002.

FISCAL ASSISTANCE

Requests for additional FTE based on fiscal notes have not always been approved, causing workload problems for the courts. The Fine Collection Center has taken some of the traffic-related workload from the clerks in courts that have joined the program, and most of the child support responsibilities are now handled by the Family Support Center. Still, there is a request in the FY 02 budget for 42.00 FTE in 29 counties. The workload in these counties has increased 45.4% in the last ten years.

The Commission commends the governor's office and the general assembly for their commitment to the courts through continued staffing assistance.

OTHER ISSUES

In addition to the issues addressed above, the Commission identified several areas of the judicial system that are attracting growing interest, specifically:

- **Increased community-based sentencing alternatives.** This is an area of growing interest nationwide, as states seek ways to cope with the growing costs of new prisons, and the cost to society of recidivism among former prison inmates.

- **Uncollected court costs.** The issue of court costs that remain uncollected has not been addressed by the Commission but may be an area for future study. A few years ago the Court Services Division of OSCA surveyed some of the courts on their collection rates and the responses were anywhere from 60% to 99%. However, the courts that have a 99% collection rate do not tax the costs. Therefore, their collection rate is very high. The courts with a lower collection rate tax the costs and attempt to collect the amounts but do not have very good results. These courts end up waiving costs or writing the costs off as uncollectible. Waiving costs says the costs are not due, while writing them off as uncollectible says the costs are still due but collection efforts are being discontinued.